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14th meeting of the Committee of the Whole

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representative of Algeria concerning the article. It was obvious, however, that peoples who were deprived of their sovereign rights and had no say in their country's affairs, could not be held responsible, once they had regained their sovereignty, for treaties which had been imposed on them. That did not mean that all treaties concluded by the predecessor State would necessarily be terminated with the accession to independence, but the Namibian people reserved the right, after examining the treaties, to take such decisions as they deemed appropriate in the light of their interests.

68. He drew the Commission's attention to the attempt made by South Africa, assisted by its allies, to annex part of Namibia's territory, namely Walvis Bay, which had formerly been occupied by United Kingdom colonial forces and the administration of which had been handed over to the Cape Colony. The territory of Namibia had been clearly defined in the course of the long struggle of the Namibian people and of the progressive forces supporting them. The future free and independent State of Namibia would cover the whole of the territory to which it was entitled, including Walvis Bay. South Africa was trying to impose its will on the Namibian people, but so far as SWAPO was concerned the problem of Walvis Bay did not exist or existed only in the minds of those who had created it. The fact was that the whole of Namibian territory was illegally occupied and one day it would all be liberated.

69. The CHAIRMAN said that unless he heard any objection he would consider that the Committee agreed to refer the United Kingdom's amendment to the Drafting Committee.

70. Mr. ESTRADA-OYUELA (Argentina) pointed out that the United Kingdom amendment was not merely one of drafting, and reminded members that the representative of the United Kingdom had suggested that account should be taken of it in the preamble to the draft.

71. Sir Ian SINCLAIR (United Kingdom) said that account could, indeed, be taken of his amendment in the preamble to the draft, but that it was up to the Drafting Committee to take a decision on the matter. He reiterated that his delegation would support any decision the Drafting Committee deemed appropriate concerning the amendment.

The meeting rose at 1.15 p.m.

14th MEETING

Friday, 15 April 1977, at 3.55 p.m.

Chairman: Mr. RIAD (Egypt)

Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976 [Agenda item 11] (*continued*)

ARTICLE 8 (Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State (*continued*)¹

1. Mr. ARIFF (Malaysia) said that, as some delegations seemed to have misunderstood the purpose of the amendment to draft article 8 submitted by his delegation (A/CONF.80/C.1/L.15), he wished to make it clear that his delegation supported the general principle that a devolution agreement had no effect on other States parties to the treaties of the predecessor State. In other words, the obligations or rights of the predecessor State did not become the obligations or rights of the successor State towards other States parties to the predecessor State's treaties. That principle was, of course, correct, for as had been pointed out in paragraphs (5) and (6) of the International Law Commission's commentary to draft article 8 (A/CONF.80/4, p. 25), the assignment of obligations or rights by a devolution agreement could not bind other States parties to the predecessor State's treaties, since they were third parties or strangers to the devolution agreement.

2. There were, of course, always exceptions to the general rule. Devolution agreements had occasionally been concluded between predecessor States and successor States for the sake of continuity of the treaty régime, apart from other reasons. He noted that draft article 8, as it stood, completely ignored the existence of international relations as practised by predecessor States and successor States during the period of transition designed to ensure the continuity of the treaty régime. In international relations, there had been occasions when other States parties to the predecessor State's treaties had agreed to accept obligations or rights under previous treaties assumed by the successor State in the devolution agreement. When Singapore had separated from Malaysia, those two States had concluded a devolution agreement, as was mentioned in the International Law Commission's commentary to draft article 8 (*ibid.*, paragraph (3)), and a number of agreements which had been concluded between Malaysia's predecessor State and third States, and which had been applicable to the

¹ For the amendments submitted to article 8, see 13th meeting, foot-note 1.

former Federation of Malaya, now benefited Malaysia and other States parties.

3. Some form of option should therefore be given to third States to acknowledge the *bona fide* intention of the successor State, as expressed in a devolution agreement, to accept and be bound by the terms and provisions of treaties concluded by the predecessor State. The devolution agreement was a kind of notification to other States parties to the predecessor State's treaties, though in itself it had no effect on the other parties to those treaties; the tacit approval of third States was required before the devolution agreement could have any effect.

4. His delegation had believed that the amendment it had submitted would have the effect of making a devolution agreement valid in respect of States parties to the predecessor State's treaties if those States agreed that the successor State should replace the predecessor State in such treaties by subrogation. The statements made by a number of delegations had indicated, however, that his delegation's amendment had caused some confusion, and he therefore proposed that it be amended to read: "unless the other parties to the particular treaty agree to accept the obligations or rights of the predecessor State as the obligations or rights of the successor State". He hoped that subamendment would dispel any doubts about his delegation's intentions.

5. Mr. MUDHO (Kenya) said that, while he understood why the United Kingdom amendment (A/CONF.80/C.1/L.11) should be referred to the Drafting Committee, the same did not apply to the subamendment just proposed by the representative of Malaysia. In his opinion, the Committee should take a vote on the Malaysian subamendment.

6. Mr. SATTAR (Pakistan) said his delegation believed that the Drafting Committee could give adequate consideration to the subamendment proposed by the representative of Malaysia, and that the Committee of the Whole should not vote on that proposal.

7. Mr. OSMAN (Somalia) supported the view expressed by the representative of Pakistan.

8. Mr. MEDJAD (Algeria) said that the substance of the amendments proposed by the United Kingdom and Malaysia was very different. Moreover, the view that all amendments could conveniently be referred to the Drafting Committee was wrong. It would be a dangerous precedent for the Committee of the Whole to entrust the Drafting Committee with the task of solving its problems.

9. Mr. AMLIE (Norway) supported the view expressed by the representative of Algeria. If it was not clear whether an amendment involved drafting problems or matters of substance, the issue should be

settled by the Committee of the Whole, not by the Drafting Committee.

10. Mr. KATEKA (United Republic of Tanzania) said that, as a result of the subamendment proposed by Malaysia, there was now some confusion concerning the United Kingdom amendment. He noted that, at the Committee's 13th meeting, no decision had been taken on the status of the United Kingdom amendment, which was as much a matter of substance as the Malaysian subamendment. He therefore proposed that the Committee should vote both on the United Kingdom amendment and on the Malaysian subamendment.

11. Mr. HELLNERS (Sweden) supported that proposal. His delegation was convinced that the Malaysian subamendment and the United Kingdom amendment raised substantive issues, and it was highly desirable for the Committee of the Whole to establish a precedent in regard to the role of the Drafting Committee. Reference to that Committee of amendments which clearly related to the substance of a draft article should be avoided at all costs.

12. Mr. TABIBI (Afghanistan) said that, as a matter of courtesy, the two amendments before the Committee, one of which had been submitted by a predecessor State and the other by a successor State, should be given equal treatment.

13. Mr. MUSEUX (France) urged that the rules of procedure should not be applied too pedantically. At the beginning of the Conference, there had been general agreement in the General Committee that every effort should be made to proceed by consensus. Both amendments should be referred to the Drafting Committee, which had so far succeeded in finding satisfactory solutions in most cases, including those raising substantive points. Frequent recourse to voting would produce a worthless convention.

14. Mr. MARESCA (Italy) and Mr. KAMIL (Indonesia) supported the views expressed by the French representative.

15. Mr. AMLIE (Norway) proposed that, in the interests of equality of treatment, a vote should also be taken on the United Kingdom amendment.

16. Mr. YIMER (Ethiopia) supported the Norwegian representative's proposal.

17. Mr. KEARNEY (United States of America) moved the closure of the debate under rule 24 of the rules of procedure (A/CONF.80/8). He further proposed that a vote should be taken on the amendments before the Committee.

18. After a procedural discussion in which Mr. TODOROV (Bulgaria), Sir Ian SINCLAIR (United Kingdom), Mr. ARIFF (Malaysia), Mr. KAMIL (Indonesia), Mr. KOECK (Holy See), Mr. SATTAR

(Pakistan), Mr. OSMAN (Somalia) and Mr. KATEKA (United Republic of Tanzania) took part, Mr. MU-SEUX (France) moved the suspension of the meeting, under rule 25 of the rules of procedure, for consultations between delegations.

19. Mr. AMLIE (Norway) opposed the French representative's motion.

20. Mr. ARAIM (Iraq) suggested that a vote might be taken in order to avoid a prolonged and confused debate on procedural matters.

21. The CHAIRMAN asked the Committee to take a decision on the motion to suspend the meeting.

The motion was carried.

The meeting was suspended at 5.15 p.m. and resumed at 5.35 p.m.

Mr. Ritter (Switzerland), vice-chairman, took the Chair.

22. Following a short procedural discussion in which the CHAIRMAN, Sir Ian SINCLAIR (United Kingdom) and Mr. ARIFF (Malaysia) took part, the CHAIRMAN suggested that the Committee should agree to refer the Malaysian amendment (A/CONF.80/C.1/L.15), as orally revised, and the United Kingdom amendment (A/CONF.80/C.1/L.11) to the Drafting Committee, on the understanding that it would make no changes in the substance of article 8.

23. Mr. AMLIE (Norway) said that his delegation objected to the reference of the Malaysian and United Kingdom amendments to the Drafting Committee. Many delegations considered that those amendments contained elements of substance as well as drafting changes and the Drafting Committee ought not to be made responsible for deciding which was which.

24. Mr. KATEKA (United Republic of Tanzania) supported the Norwegian representative. If, in the view of even one delegation, the amendments in question contained elements of substance, it was for the Committee of the Whole to deal with them or for the sponsors to withdraw them.

25. Mr. SATTAR (Pakistan) disagreed with the two previous speakers. To refer the two amendments to the Drafting Committee would simply mean that the Committee of the Whole approved the International Law Commission's text in substance, but that the Drafting Committee was being invited to consider whether any drafting elements in the amendments submitted might assist in clarifying the wording of the article.

26. Following a further short procedural discussion in which Mr. KEARNEY (United States of America), Mr. YIMER (Ethiopia), Mr. MARESCA (Italy), Mr. KAMIL (Indonesia), Mr. YAÑEZ-BARNUEVO

(Spain) and Mr. CASTILLO (Peru) took part, the CHAIRMAN invited the Committee to vote on the Malaysian amendment to article 8 (A/CONF.80/C.1/L.15) as orally revised.

The Malaysian amendment was rejected by 43 votes to 2, with 23 abstentions.

27. The CHAIRMAN then invited the Committee to vote on the United Kingdom amendment to article 8 (A/CONF.80/C.1/L.11).

The United Kingdom amendment was rejected by 28 votes to 23, with 21 abstentions.

28. The CHAIRMAN said that, if there were no objections, he would take it that the Committee provisionally adopted the International Law Commission's text of draft article 8 and referred it to the Drafting Committee.

It was so decided.²

The meeting rose at 6.25 p.m.

² For resumption of the discussion of article 8, see 31st meeting, paras. 8-9.

15th MEETING

Monday, 18 April 1977, at 10.55 a.m.

Chairman: Mr. RIAD (Egypt)

Organization of work

1. The CHAIRMAN drew the Committee's attention to the fact that it was considerably behind in its work after the first two weeks, since according to the document on methods of work and procedures adopted by the Conference on 5 April 1977 (A/CONF.80/9) the Committee should currently be discussing draft article 16, whereas it had only reached article 9. He went on to express the hope that delegations wishing to submit proposals on the preamble and final clauses would do so as soon as possible.

2. Mr. TORRES-BERNARDEZ (Secretary of the Committee), referring to rules 3 and 4 of the rules of procedure (A/CONF.80/8), invited the members of the Committee to submit their credentials to the Secretariat as soon as possible for examination by the Credentials Committee; credentials should be issued either by the Head of State or Government or by the Minister for Foreign Affairs.